

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

BRUCE D. FORNEY,)	
)	CASE NO. 97R-336
Appellant,)	
)	
v.)	DOCKET ENTRY
)	REVERSING DECISION
BOX BUTTE COUNTY BOARD)	OF APPELLEE
OF EQUALIZATION,)	
)	
Appellee.)	

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for hearing on the merits in the City of Gering, Scotts Bluff County, Nebraska, on the 25th day of June, 1998, pursuant to a Notice of Hearing issued the 31st day of March, 1998.

Appellant appeared personally. Appellee appeared through counsel. During the hearing, the Commission took judicial notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (1997 Supp.), requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission, after receiving the exhibits and hearing evidence and argument, entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeal in this case, which were in substance as follows:

FINDINGS OF FACT

From the record, the Commission found and determined as follows:

- I. That Appellant is the owner of record of certain residential real property as described in the petition in this case.
- II. That Appellant timely filed a protest of the assessed value of his property for tax year 1997.
- III. That the basis for the protest was the allegation that the assessed value of the subject property is arbitrary and excessive.
- IV. That the County Assessor proposed valuing the property at \$367,347 for the purposes of taxation.
- V. That the Appellant requested that the property be valued at \$265,000 for purposes of taxation.
- VI. That the Appellee denied the protest.
- VII. That Appellant thereafter timely filed an appeal of that decision to the Commission.
- VIII. That the Cost Approach is a professionally accepted mass appraisal methodology. That the Cost Approach is particularly suited to unique and newer properties. That the subject property was built in 1995. That the subject property is a unique property in Box Butte County. That therefore the Cost Approach is appropriate for valuation of the subject property. That the 1996 assessed value of the subject property, \$325,534, was based on the Cost Approach.
- IX. That the uncontraverted evidence before the Commission is that the increase in assessed value of the subject property in 1997 from 1996 is an "across-the-board" increase applied

to all improvements to residential real property within the County, with the exception of a depressed area near the railroad tracks in the City of Alliance. That there were 480 qualified sales of residential real property used in the statistical study of the level and quality of assessments of Box Butte County for tax year 1997. That only 11 sales out of the 480 qualified sales were for a price over \$125,000. That there were no sales of any residential real property with a sale price of more than \$250,000.

- X. That no residential real property with a value of over \$300,000 has sold as of January 1, 1997, in the County. That therefore the application of a 14% increase in the assessed value of the subject property is not supported by the evidence.
- XI. That a 25% depreciation fraction was applied to the subject property in 1996, to account for the superadequacy of the subject property. (Ex 2., p.3)
- XII. That from the record before the Commission the Appellant has established by a preponderance of the evidence that the decision of the Appellee was both unreasonable and arbitrary.
- XIII. That therefore the assessed value of the subject property as determined by the Appellee for tax year 1997 is not supported by the evidence.

CONCLUSIONS OF LAW

- I. That the Commission has jurisdiction over the parties and the subject matter of this appeal.
- II. That the Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the Appellee unless evidence is adduced establishing that the action of the Appellee was unreasonable or arbitrary.

- III. That as a matter of law the Appellant has established by a preponderance of the evidence that the action of the Appellee was unreasonable and arbitrary.
- IV. That based on the record before the Commission, the Commission must, and hereby does, conclude as a matter of law that the decision of the Box Butte County Board of Equalization which set the assessed value of the subject property for purposes of taxation at \$367,347 for tax year 1997 was both unreasonable and arbitrary.
- V. That therefore the decision of the Box Butte County Board of Equalization must be vacated and reversed.

ORDER

- I. That the order of the Box Butte County Board of Equalization setting the assessed value of the subject property for tax year 1997 at \$367,347 is vacated and reversed.
- II. That Appellants' real property legally described as Lots 1 & 2, Block 1 North Park , Box Butte County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$ 26,870
Improvements	\$298,664
Total	\$325,534


- III. That this decision, if no appeal is filed, shall be certified within thirty days to the Box Butte County Treasurer, and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
- IV. That this decision shall only be applicable to tax year 1997.
- V. That each party is to bear its own costs in this matter.

The above and foregoing Findings of Fact, Conclusions of Law, and Order were approved by a quorum of the Commission, and entered of record on the 25th day of June, 1998, and are therefore deemed to be the Order of Commission in this case, pursuant to Neb. Rev. Stat. §77-5005 (Reissue 1996).

Signed and sealed this 6th day of July, 1998.

SEAL





Mark P. Reynolds, Chairman